IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 22693 of 2006(B)

OS. 166/2005 of SUB COURT, KATTAPPANA
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PETITIONER:

P.R. SASIDHARAN, S/O. RAMAN,
AGED 51 YEARS, RESIDING AT PULLICKAL HOUSE,
PONNIKKAVALA KARA, KATTAPPANA VILLAGE.

BY ADV. SRI. T. RAJASEKHARAN NAIR

RESPONDENT:

SUKUMARAN, S/O. PAPPAN, RESIDING AT
NADUVILATTU HOUSE, ERUMELY VADAKKU VILLAGE,
KANJIRAPPALLY TALUK.

BY ADV. SRI. S. SACHITHANANDA PAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE EXHIBIT A-4 PRODUCED AND MARKED BY THE COURT BELOW IN O.S. NO. 166/2005, PASSED BY THE SUB COURT, KATTAPPANA.**
EXT. P2	**:**	**COPY OF THE APPLICATION FILED BY THE PETITIONER IN O.S. NO. 166/2005 BEFORE THE SUB COURT, KATTAPPANA.**
EXT. P3	**:**	**COPY OF THE OBJECTION FILED BY THE RESPONDENT AGAINST THE EXHIBIT P-2 APPLICATION.**
EXT. P4	**:**	**COPY OF THE ORDER DATED 21.08.2006 PASSED IN I.A. NO. 1042/2006 IN O.S. NO. 166/2005 BY THE SUB COURT, KATTAPPANA.**

// TRUE COPY //

P.A. to Judge.

smp

M. SASIDHARAN NAMBIAR, J.

W.P.(C) NO. 22693 OF 2006

Dated this the 22nd day of January, 2007.

J U D G M E N T

This petition is filed under Article 226 & 227 of the Constitution of India challenging Exhibit P4 order passed by learned Sub Judge, Kattappana dismissing I.A. 1042/06 in O.S. 166/05 filed to reopen the evidence and to send disputed Ext. A4 promissory note to an expert for opinion. Respondent is the defendant.

2. In the written statement respondent contended that, he did not execute or sign the disputed promissory note. Learned Sub Judge under Ext. P4 order dismissed the application holding that, application was filed belatedly and defendant had raised a contention that he did not sign the promissory note and at the belated stage it cannot be sent to an expert.

3. Learned counsel appearing for petitioner and respondent were heard.

4. The argument of learned counsel appearing for petitioner is that, opinion of an expert is necessary for the court to arrive at a right conclusion as to whether the disputed promissory note was executed by respondent or not and on the ground of delay alone, petition should not have been dismissed.

5. It was also submitted that the application was filed on the date on which the evidence was recorded and therefore, learned Sub Judge should have been allowed the application. Learned counsel appearing for respondent argued that, in the written statement itself respondent contended that he did not sign the promissory note and therefore at the belated stage, document cannot be sent to an expert.

6. On hearing learned counsel appearing for petitioner and respondent it is clear that in the interest of justice, learned Sub Judge should have granted an opportunity to petitioner to get the opinion of an expert. When the dispute is with regard to signature in disputed document, it would have been better for the court to get the opinion of an expert.

Therefore, Ext. P4 order is quashed. I.A. 1042/2006 stands allowed. Learned Sub Judge is directed to send the promissory note with admitted signature of petitioner to an expert at the expense of petitioner. Respondent is also entitled to produce other documents having his admitted signature, if so advised.

M. SASIDHARAN NAMBIAR, JUDGE.

smp